

IN THE

Court of Appeal of the State of California

IN AND FOR THE

Fifth Appellate District

**COURTROOM PROCEEDINGS**

The court met in its courtroom at 10:00 A.M. Present: Honorable Nickolas J. Dibiaso, Acting Presiding Justice; Honorable Dennis A. Cornell, Associate Justice; Honorable Betty L. Dawson, Associate Justice; and Kay Frauenholtz, Clerk/Administrator, by Diana Monopoli, Deputy Clerk.

**F043135      People v. Rutledge Jr.**

Cause called and argued by Bruce R. Finch, Esq., counsel for appellant and by John A. Thawley, Deputy Attorney General, counsel for respondent.

Cause ordered submitted.

Court recessed until Wednesday, August 11, 2004 at 1:30 P.M.

The court reconvened in its courtroom at 1:30 P.M. Present: Honorable Nickolas J. Dibiaso, Acting Presiding Justice; Honorable Dennis A. Cornell, Associate Justice; Honorable Betty L. Dawson, Associate Justice; and Kay Frauenholtz, Clerk/Administrator, by Diana Monopoli, Deputy Clerk.

**F041338      Cave v. California Department of Developmental Services**

Cause called and argued by Karin L. Polli, Deputy Attorney General, counsel for appellant and by Walter W. Whelan, Esq., counsel for respondent.

Cause ordered submitted.

Court recessed until Thursday, August 12, 2004 at 10:00 A.M.

**F044624      In re Michael R., a Minor**

Respondent's petition for rehearing filed herein is denied.

**F043562      People v. Rios**

Counsel having failed to request oral argument in the above-entitled case, oral argument is deemed waived in accordance with the provisions of a notice heretofore mailed to counsel and the cause is submitted.

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- F043562      People v. Rios**  
The judgment is affirmed.  
By the Court.  
[NOT TO BE PUBLISHED IN OFFICIAL REPORTS]
- F043662      People v. Crossan**  
The above-entitled case is submitted for decision.
- F043662      People v. Crossan**  
The judgment is affirmed.  
By the Court.  
[NOT TO BE PUBLISHED IN OFFICIAL REPORTS]
- F042877      People v. Duran**  
Counsel having failed to request oral argument in the above-entitled case, oral argument is deemed waived in accordance with the provisions of a notice heretofore mailed to counsel and the cause is submitted.
- F042877      People v. Duran**  
The judgment is affirmed with modifications.  
By the Court.  
[NOT TO BE PUBLISHED IN OFFICIAL REPORTS]
- F043726      People v. Gamble**  
Oral argument having been waived in the above-entitled case in accordance with the provisions of a notice mailed to counsel, the calendar date heretofore set is vacated and the case is submitted for decision.

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**F043726      People v. Gamble**

The judgment is set aside for the limited purpose of allowing Gamble, first, a hearing on his *Marsden* motion and, second, a hearing on his motion to withdraw his guilty plea. On the latter motion, he has the right to have counsel represent him. After adjudicating both motions, the court has the option to proceed in accordance with law if the court grants the latter motion or to reenter the judgment if Gamble abandons, or if the court denies, the latter motion. Gomes, J.

We concur: Harris, Acting P.J.; Levy, J.

[NOT TO BE PUBLISHED IN OFFICIAL REPORTS]

**F045381      In re Michael F., a Minor; Kern County Department of Human Services v. Johanna F.**

Counsel having failed to request oral argument in the above-entitled case, oral argument is deemed waived in accordance with the provisions of a notice heretofore mailed to counsel and the cause is submitted.

**F045381      In re Michael F., a Minor; Kern County Department of Human Services v. Johanna F.**

The order terminating parental rights is affirmed.

By the Court.

[NOT TO BE PUBLISHED IN OFFICIAL REPORTS]

**F043645      People v. Vega**

Counsel having failed to request oral argument in the above-entitled case, oral argument is deemed waived in accordance with the provisions of a notice heretofore mailed to counsel and the cause is submitted.

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**F043645      People v. Vega**

The judgment is affirmed.

By the Court.

[NOT TO BE PUBLISHED IN OFFICIAL REPORTS]

**F042980      Haney v. Aramark Uniform Services, Inc.**

Respondent's petition for rehearing filed herein is granted. The cause stands submitted for decision without further briefing or argument.

**F042980      Haney v. Aramark Uniform Services, Inc.**

The judgment is reversed. The superior court is directed to vacate its order granting Aramark's motion for summary adjudication as to Haney's second cause of action and to enter an order denying that motion. Appellant is awarded costs on appeal. Dawson, J.

We concur: Harris, Acting P.J.; Gomes, J.

[CERTIFIED FOR PUBLICATION]

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**STANDING ORDER NO. 04-1**  
As Modified August 11, 2004

**THE COURT:**

Pending opinions by the California Supreme Court in *People v. Towne* (review granted Jul. 14, 2004, S125677), and *People v. Black* (review granted Jul. 28, 2004, S126182), if appellate counsel wishes to raise any issue presented by *Blakely v. Washington* (2004) 542 U.S. \_\_\_, [124 S.Ct. 2531, 159 L.Ed.2d 403], he or she may file a letter consistent in form with the attached “Supplemental Argument Pursuant to Standing Order No. 04-1,” thereby preserving the issues for further state and federal review. Counsel need not file an application for leave to file the supplemental statement.

The People, through the Attorney General, need not file a response to the letter statement and the court will deem the stated issues to be opposed by the People.

The Court may request further briefing in any case. Upon a showing of good cause, the Court will accept motions for supplemental briefing to address *Blakely* issues not raised in *Towne* and *Black*.

This order does not apply to any pending appeal in which this court has ordered or authorized specific briefing on a *Blakely* issue.

The purpose of this order is to ensure that the subject issues will be raised and preserved for review in an efficient manner.

Dated: August 11, 2004

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Supplemental Argument Pursuant to Standing Order NO. 04-1

In the trial court, Mr. \_\_\_\_\_ was sentenced to an upper term of 11 years in state prison for violation of Penal Code section 192 and four years, consecutive, pursuant to Penal Code section 12022.5. In imposing the upper term, the court cited the following factors: “This is a crime of callousness, great bodily harm done, manner in which the crime is carried out shows planning, sophistication and professionalism. He engaged in violent conduct. He is a known gang member or he admitted to that even though he disputes that. [Para.] This is a crime involving separate acts of violence or threats of violence, they outweigh any of the mitigation of his youth or lack of prior records. And the fact that he voluntarily acknowledged wrongdoing prior to that in the matter that he was carrying a firearm. [sic] [Para.] He willfully engaged in the violent encounter. That as a part of this he left the scene, he attempted to flee the area. Furthermore, that he tried to dispose of the weapon.”

These factors were neither found by a jury nor admitted by virtue of Mr. \_\_\_\_\_’s no contest plea. As a consequence, Mr. \_\_\_\_\_ was denied his Sixth Amendment right to a jury trial and proof beyond a reasonable doubt of the aggravating factors utilized to impose a sentence greater than the statutory maximum of the six-year middle term. (U.S. Const., Amends. V, VI, XIV; *Blakely v. Washington* (No. 02-1632, June 24, 2004) 524 U.S. \_\_\_\_\_, 2004 WL 1402697, 2004 DJDAR 7581; *Apprendi v. New Jersey* (2000) 530 U.S. 466.) Counsel notes that this issue is pending in the California Supreme Court. (*People v. Towne*, review granted 7/14/04, S125677; *People v. Black*, review granted 8/2/04, S126182.)

Pursuant to this Court’s standing order no. 04-1, dated August 11, 2004, appellant raises this issue.

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**F045959      Three-Way Chevrolet Co., Inc. v. Jack Hickman Trucking, Inc., et al.**

Appellant having filed an abandonment and/or request for  
dismissal of appeal, IT IS HEREBY ORDERED that the appeal in the  
above-entitled action is dismissed.